88-836

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JULIA McCAIN LAMPKIN ASAM, Ph.D., J.D.

Plaintiff/Appellant

vs.

ROBERT J. SHAPIRO

Defendant/Appellee

APPEAL FROM THE U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

Julia McCain Lampkin Asam, Ph.D.,J.D.
P.O. Box 1022
University, Alabama 35486

6/pp

QUESTION PRESENTED

I. Whether the Plaintiff's 5th and 7th Amendment rights under the U. S. Constitution have been violated because the lower federal courts failed to rule according to the Federal Rules of Civil Procedure, Rule 56(c), when the record clearly shows there is a dispute in this negligent legal malpractice action in a diversity of citizenship case, i.e. the Defendant/Appellee failed to show in the record that there was no genuine issues of material fact, and summary judgment should have not been granted when disputed facts (see Argument) and a demand for jury trial; therefore, the U. S. Court of Appeals, Eleventh Circuit DID NOT rule according to 11th Cir. R. 36-1.

II. Whether the State of Alabama's long arm statute (Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) was held to be invalid and repugnant to the U.S Constitution, Fifth Amendment due process when in fact and law in personam jurisdiction was not lacking in

the U.S. District Court, Northern District of Alabama, Western Division, since the underlying case, 87-6-CIV F.M.17(b) should NOT have been transferred to Florida for lack of in personam jurisdiction due to minimum contacts of Defendant with Alabama i.e. Whether U.S. Court of Appeals, Eleventh Circuit held state statute [Alabama long arm statute, Alabama Rules of Civil Procedure, 4.2 a(2)(I)] repugnant to U.S. Constitution, Amendment V, due process because affirmed summary judgment?

III. The Plaintiff/Appellant incorporates all the issues in Case no. 88-3026 in the U.S. Court of Appeals, Eleventh Circuit, and related issues in 87-390 and 87-345, The Supreme Court of the United States cases, which should have been added as supplement to the record since Plaintiff/Appellant is also appealing the denial of "Motion to Supplement the Record in the U.S. Court of Appeals, Eleventh Circuit.

PARTIES BELOW

All parties below are parties to this petition.

The Plaintiff/Appellant is Julia L. Asam, (Julia McCain Lampkin Asam).

The Defendants/Appellees are Hon. Sam C. Pointer, U.S. District Judge, U.S. District Judge, Northern District of Alabama,Western Division, U.S. Courthouse, Birmingham, Alabama 35203; Hon. Elizabeth A. Kovachevich, U. S. District Judge, U.S. District Court, Middle District of Florida 33602; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia, 30303; INAPRO, P.O. Box 2353, New York, New York 10272, Mr. John D. Shofi, and Ms. Ann O'Hern, Attorneys, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Building, Tampa, Florida 33629, and Mr. Robert J. Shapiro, 13822 Cherry Creek Dr., Tampa, Florida 33618.

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STATEMENT REGARDING ORAL ARGUMENT AND REQUESTS TO WRITE MERITS' BRIEF

Because of the complexities, irregularities and numerous judicial errors made in the lower court, oral argument is requested so that the Honorable Justices can understand and ask questions.

The Plaintiff/Appellant respectively requests to write the Merits' Brief.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. ___

JULIA L. ASAM, Ph.D.,J.D.

Plaintiff/Appellant

vs.

ROBERT J. SHAPIRO,

Defendant/Appellee

APPEAL FROM THE U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

The U.S. Court of Appeals, Eleventh Circuit, is clearly erroneous in affirming the U.S. District Court, Middle District of Florida's decision granting Defendants summary judgment when the summary judgment below was NOT supported by the record because disputed facts in a negligent legal malpractice action i.e. the attorney in the underlying case, Mr. Robert J. Shapiro, Defendant/Appellee, demanded $5000 of unearned money within 48 hours or he would withdraw from the underlying case 86-3142 (87-531 in the Supreme Court of the United

States) after Mr. Shapiro, had received over $12,000 to represent client (Julia Asam). Therefore, the U.S. Court of Appeals, Eleventh Circuit, did not rule according to 11th Cir. Rule 36-1.

OPINION BELOW

The Judgment rendered by the U.S. Court of Appeals, Eleventh Circuit, August 24, 1988, was a "Per Curiam: Affirmed. See 11th Cir. R 36-1", and therefore was without a written opinion. See APPENDIX A. The U.S. Court of Appeals, Eleventh Circuit affirmed a summary judgment in a negligent legal malpractice case in a diversity of citizenship action when the summary judgment is not supported by the record that shows disputed facts.

JURISDICTION

The jurisdiction of the Supreme Court of the United States to review the final judgment order of the U.S. Court of Appeals, Eleventh Circuit, is invoked under 28 U.S.C. §1254, as appeal or Writ.

The Supreme Court of the United States has jurisdiction under 28 U.S.C. §2106, 28 U.S.C. §1343(3), and 42 U.S.C. §1983.

Also see 28 U.S.C. §1651 concerning the extraordinary writs in the denial of the "Motion to Supplement the Reccrd." See Appendix B, attachments to "Notice of Appeal".

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V

The Plaintiff/Appellant's due process rights under the Fifth Amendment of the U. S. Constitution was violated when an Honorable Court does not rule according to the law, record, and Federal Rules of Civil Procedure, Rule 56(c). The U.S. Court of Appeals, Eleventh Circuit, failed to read the record which clearly showed disputed facts and failed to read the Appellant's brief that pointed out these disputed facts and the summary judgment should nct have been affirmed since the U.S. Court of Appeals did not rule according to 11th Cir. R. 36-1.

AMENDMENT VII

The Defendant failed to show there was no genuine issue of material fact and as a matter of law in a negligent legal malpractice case in a diversity of citizenship case, the case should have been tried before a jury. Since the case should have been tried before a jury and there was a jury demand and no legal reason to affirm summary judgment the Plaintiff/ Appellant's Seventh Amendment rights under the U.S. Constitution was violated.

RULES INVOLVED

The pertinent parts of the following rules involved.

The Federal Rules of Civil Procedure, Rule 56 (c) states,

> "The judgment sought shall be rendered forthwith if the pleadings... admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

Alabama Rules of Civil Procedure 4.2 a(2)(I)

"(I) otherwise having some minimum contacts with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action. The minimum contacts referred to in this subdivision (I) shall be deemed sufficient, notwithstanding a failure to satisfy the requirement of subdivisions (A)-(H) of this subsection (2), so long as the prosecution of the action against a person in this state is not inconsistent with the constitution of this state or the Constitution of the United States."

STATEMENT OF THE CASE

The U.S. Court of Appeals, Eleventh Circuit (case no. 88-3026) without checking the record which clearly showed disputed facts about negligent legal malpractice of the Defendant/ Appellee, ERRONEOUSLY affirmed the underlying case no. 87-6-CIV Ft. M. 17 (B), which is a diversity of citizenhsip with negligent legal malpractice action of Mr. Robert J. Shapiro, also attorney, who made a demand of $5000 unearned money within 48 hours or he would withdraw as attorney in the underlying case number 86-3142 in the U.S. Court of Appeals, Eleventh Circuit.

The Complaint (R1 Complaint) was stamped filed October 30, 1986 as case CV 86 P 2020W in the U.S. District Court, Northern District of Alabama, Western Division. On January 13, 1987, the Hon. Sam C. Pointer ordered the instant case transferred to the U.S. District Court, Middle District of Florida, Fort Myers Division, (R1 Order filed Jan. 13, 1987, and R1 Memorandum Opinion filed Jan. 13, 1987).

After the Defendant did not file the Answer or Requests for Admissions timely, Plaintiff filed on March 9, 1987, Motion for Summary Judgment (R2 34), with affidavit (R2 35) and Memorandum in Support... (R2 36). On April 9, 1987, the Court denied Plaintiff's Motion for Summary Judgment (R2 49).

The Plaintiff/Appellant filed two Writ for Mandamus (87-3184 and 87-7252 which had respectively 87-345 and 87-390 in The Supreme Court of the United States which were denied.)

On November 6, 1987, the Plaintiff filed a Memorandum to Court (R3 80) which stated

in detail disputed facts that would preclude any Summary Judgment.

1. Whether the Defendant, Mr. Shapiro, breached his fiduciary duty and duty of loyalty and honest dealing to his client, Julia Asam, at the time in November 1984, when Mr. Shapiro demanded $5000 of unearned money within 48 hours or he would withdraw after previously receiving over $12,000 i.e. did Mr. Shapiro act as a reasonable prudent attorney in withdrawing and by his sudden manner of withdrawing and failing to release the contingency fee claim also unearned, caused the plaintiff to lose at the trial court level because there was no attorney.

2. Whether the Defendant, Mr. Shapiro breached the retainer contract since the contract did not state he could withdraw from the case within 48 hours after a demand of $5000 unearned money. The contract stated he would represent the client and the

plaintiff had previously always paid whatever money he had requested but there was no time limit of 48 hours.

3. Whether the Defendant, Mr. Shapiro, commited an intentional tort, particularly fraud, which was stated in particular in the Complaint with Exhibits since the Motion to Withdraw sent on Nov. 2, 1984 was different from the one on Nov. 9, 1984.

4. Whether the Defendant, Mr. Shapiro, breached his duty of due care and was negligent by failing to continue to represent Julia Asam until she obtained an attorney, i.e. Mr. Shapiro owed the plaintiff a duty of due care to represent her in the underlying case after receiving over $12,000 and Mr. Shapiro failed to act with the degree and skill of an ordinary general legal practitioner, since Mr. Shapiro did not stay on the case until another attorney was obtained and gave unreasonable notice of 48 hours to withdraw from the case unless he was paid $5000 unearned money.

Mr. Shapiro failed and was negligent by not notifying the Plaintiff at the time he turned over the files that there was an altered and or exchange document in one of his depositions. By the time the plaintiff discovered the said altered document and wrote an amended complaint, the amended complaint was denied by the Court.

All these issues are disputed and therefore, as a matter of law, summary judgment is precluded with the Summary Judgment filed on Nov. 6, 1987 by Defendant.

See Turner v. Southern Ry. Co. 46 F.R.D. 71, which states,

"Issues of negligence are ordinarily not susceptible of summary adjudication. Fed. Rules Civ. Proc. rule 46, 28 U.S.C.A."
Therefore, as a matter of law, the summary judgment should not have been affirmed for a negligent legal malpractice case.

See Argument for additional law p. 16.

The POINT IS the U.S. Court of Appeals, Eleventh Circuit failed to notice in the record the disputed facts (see R3 80, R3 83, R3 84, R3 87, R3 88, R4 104, R4 105 and R4 98) clearly showing that summary judgment was precluded and the case should have been tried before a jury which had been demanded, i.e. the U.S. Court of Appeals, Eleventh Circuit did not rule according to 11th Cir. R. 36-1 (d) which states,

> (d) summary jdugment, directed verdict, or judgment on the pleadings is supported by the record;"

because when the judgment was rendered on August 24, 1988 affirming the lower court without an opinion it was obvious that the Honorable Court had not read the record which clearly shows the disputed facts that preclude any summary judgment.

Defendant/Appellee, Robert J. Shapiro, attorney, was retained to represent Julia Asam, Plaintiff/ Appellant in the 42 U.S.C. §1983

action 86-3142 (87-531) case but Mr. Shapiro committed negligent legal malpractice, which arose in Montgomery, Alabama when Defendant Shapiro made a demand in a letter addressed to Dr. Julia L. Asam, P.O. Box 20544, Montgomery, AL 36120, dated November 2, 1984 [copy of letter attached to Complaint] showing that it was stamped Montgoemery, Alabama and said letter demanded $5000 unearned retainer money or Mr. Shapiro would withdraw as attorney on November 9, 1984 (and Mr. Shapiro did withdraw on November 9, 1984) when the demand was for unearned money of $5000 within 48 hours. Therefore, Mr. Shapiro breached his contract for legal services with an Alabama resident, Julia Asam, Plaintiff/Appellant.

Dr. Asam chose to file the instant underlying case in the U.S. District Court, Northern District of Alabama, Western Division, since she is a resident of Alabama in Tuscaloosa, Alabama. The case should have remained in Alabama since minimum contacts were clear-

ly shown with the State of Alabama according to the forum's state (Alabama) under Alabama Rules of Civil Procedure 4.2 a(2)(I).

Because purposeful transactional business was conducted in the state of Alabama by Mr. Shapiro by his minimum contacts with the state of Alabama as described above, and the underlying case (currently 87-6-CIV F.M. 17 (B) in the U. S. District Court, Middle District of Florida, Fort Myers Division, should be transferred back to the U.S. District Court for the Northern District of Alabama, Western Division, because there is NO LACK OF IN PERSONAM jurisdiction. The Honorable Judge Sam C. Pointer, U.S. District Judge for the U.S. District Court for the Northern District of Alabama, Western Division, made an error in interpreting the forum's state law on minimum contacts under Alabama Rules of Civil Procedure 4.2 a(2)(I).

The alternative court to transfer back into a federal court in Alabama is the U.S. Dis-

trict Court, Middle District of Alabama because the breach of the retainer agreement between Julia Asam and Defendant, Robert J. Shapiro occurred when Mr. Shapiro demanded $5000 unearned money within 48 hours or he would withdraw as attorney in the 42 U.S.C. §1983 underlying action with pendent libel [86-3142 U.S. Court of Appeals, 11th Circuit, and 87-531, The Supreme Court of the United States].

Defendant, Robert J. Shapiro did transact business in the State of Alabama by his admitted correspondence and telephone conversations from Florida to Alabama, and in particular the purposefully minimum contact with the State of Alabama was made when he wrote his letter dated June 1, 1982 to Julia Asam in Alabama negotiating a retainer agreement and requesting not only Julia Asam to sign the agreement but her father to sign the agreement and her father had been an Alabama resident for over 50 years. Further, Defend-

ant Shapiro asked for $2000.00 in the same letter which is transacting business. [See APPENDIX C AND D OF 87-390, The Supreme Court of the United States; also see APPENDIX G OF 87-390 detailing in the quote from Mr. Shapiro's letter that Mr. Shapiro made a demand for $5000 within 48 hours or he would withdraw.]

Mr. Shapiro intentionally would not sign a release from the contingency of the retainer contract until after the underlying § 1983 trial and thus Mr. Shapiro prevented Plaintiff from obtaining counsel for trial in the underlying case.

Mr. Shapiro acted <u>negligently</u> as an attorney by failing to notify the Plaintiff that the defendants in the § 1983 action had altered and exchanged a document in a deposition.

Also see 87-531, The Supreme Court of the United States pp. 16-19 concerning PHANTOM DOCUMENT #34 when the highest document in Exhibits by Defendants was #27 -- p. 19 of

87-531 which showed the U.S. Court of Appeals, Eleventh Circuit was incorrect in affirming the underlying § 1983 action. If Mr. Shapiro had remained on the case since he had already received over $12,000.00 before his 48 hours demand for $5000 of unearned money, the underlying case should have not been lost because the maintaining of a false document in a teacher's personnel file to prevent future employment is clearly stigmatization and a violation of liberty rights under the 14th Amendment to the U.S. Constitution and definitely a 42 U.S.C. § 1983 action.

ARGUMENT AND SUBSTANTIALITY OF QUESTIONS

I. The Plaintiff's 5th and 7 Amendment rights under the U.S. Constitution have been violated because the lower federal courts failed to rule according to the Federal Rules of Civil Procedure, Rule 56(c), when the record clearly shows there is a dispute in this negligent legal malpractice action in a diversity of citizenship case, i.e. the Defendant/ Appellee failed to show in the record that there was no genuine issues of material fact, and summary judgment should NOT have been granted when disputed facts and a demand for jury trial; therefore, the U. S. Court of Appeals, Eleventh Circuit DID NOT rule according to 11th Cir. R. 36-1.

See Marcus v. St. Paul Fire and Marine Ins. Co., 651 F. 2d 379, (5th Cir., 1981), states.

> "A motion for summary judgment may be granted in federal court only if there is no issue as to any material fact and the law favors the moving party, there is no discretion to award summary judgment if this standard is not met. Fed. Rules Civ. Proc. Rule 56(c), 28 U.S.C.A. (Emphasis added.)

Mr. Shapiro breached a fiduciary relationship with his client Dr. Asam by receiving $12,000.00 and then demanding $5000 of unearned money within 48 hours or he would withdraw.

See Gerner v. Hospital Affiliates International, Inc., 602 F. 2d 685, at 686 (5th Cir., 1979) which states,

> "Issues of fact were presented as to whether a fiduciary relationship existed and was breached... thus precluding summary judgment in action by plaintiff..."

The STANDARD FOR MALPRACTICE IS THE REASONABLE ATTORNEY i.e. what would the reasonable attorney have done and should have been a jury question. There was a jury demand.

Barbri Bar Review, defines Standard of care: in Professional Responsibility, p. 7, 1987 as follows for a lawyer:

> "Standard of care: The standard of care for a general practioner is the degree of care, skill, and prudence possessed by general practioners of ordinary skill and capacity. The standard of care is higher for one who purports to be a specialist in a field of law; the degree of care, skill, and prudence possessed by lawyers who specialize in that field."

Defendant, Mr. Shapiro, was holding out to be a specialist in federal cases.

The standard for negligence is what a reasonable man would have done and should have been a jury question is this negligent legal malpractice action.

See Coco v. Winston Industries, Inc., 383 F. Supp. 405 (1974), which states,

> "Generally, summary judgment is not granted in an action based upon negligence. fed. Rules Civ. Proc. Rule 56, 28 U.S.C.A."

Mr. Robert J. Shapiro, Defendant/ Appellee, clearly committed legal malpriactice because he breached the attorney-client contract (R1 Complaint, Exhibit B), breached his fiduciary duty by quitting as attorney after 48 hours notice, acted in bad faith by perpetrating a fraud on the court with a false reason to withdraw, and neglected the client, Julia Asam, in 1983 when he knew or should have known of an altered or exchange document in a deposition.

The trial court made a gross error by not delaying decision on Summary Judgment until discovery was completed, especially discovery

that was pending since the Defendant failed to produce complete accounting (R4 105 -2-¶2), and denying hearing (R4 90).

The trial court made a gross error in not granting the Plaintiff's Summary Judgment or Motion for Default Judgment earlier in the case because the Defendant failed to timely file his Answers and Requests for Admissions, (R1 20 and R2 49). Also see 87-345, The Supreme Court of the United States case.

For the elements to grant a summary judgment, see Impossible Electronics Techniques Inc. v. Wackenhut Protective Systems, Inc. 669 F. 2d 1026 at 1030 (5th Cir., 1982) From U.S. District Court for the Southern District of Florida), which states,

> "Summary judgment should be entered only if "there is no genuine issue as to any material fact and... the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). See Casey Enterprises v. American Hardware Mutual Insurance Co., 655 F. 2d 598, 601-2 (5th Cir. 1981)."

See the Supreme Court of the United States in Cellotex Corp. v. Catrett, 477 U.S. __, 91 L. Ed. 2d 265, 106 S. Ct. ___, (1986), which states,

> "In our view, the plain language of Rule 56 (c) mandates the entry of summary judgment after adequate time for discovery and upon motion, against a party who fails to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

The bottom line is the Honorable Judge of the trial court ignored the adequate time for discovery according to the Celotex case when the Judge was noticed that adequate discovery was not completed and both sides said needed six more months on Nov. 6, 1987 (R5 4). Defendant had not taken deposition either at the time of the decision on summary judgment, Dec. 21, 1987. (R4 104).

See Sweat v. The Miller Brewing Co., 708 F. 2d 655 (11th Cir. 1983). Also see Marcus v. St. Paul Fire and Marine Ins. co. 651 2d 379, at 380 which held that there is NO DISCRETION to award Summary Judgment unless

the standard is met which is "no issue as to any material fact." Therefore, the U.S. Court of Appeals, Eleventh Circuit, was clearly erroneous in affirming the judgment for summary judgment for Defendant by the trial court; the case should have been before a jury since there were clearly disputed facts and a demand for a jury. See R3 87 and attached exhibits, and R4 105 and attached exhibits and R1 Complaint and attached exhibits) and affidavit (R4 98). See Weiner v. Moreno, 271 So. 2d 217 at 219, (3rd Dist., District Court of Appeal of Florida), which states the elements of negligent malpractice.

(1) The attorney's employment

(2) Attorney's neglect of a reasonable duty

(3) that such negligence resulted in and was the proximate cause of loss to the client."

The instant malpractice action meets all the elements of negligent malpractice and therefore, the case should have been tried

by a jury since the Defendant is denying malpractice. The U.S. Court of Appeals, Eleventh Circuit did not rule according to 11th Cir. R. 36-1.

See St. Cyr v. Greyhound Lines, Inc., 486 F. Supp. 724, (U.S. Dist. Court, E.D.N.Y., 1980), which states,

> "In context of actions alleging defendant's negligence, summary judgment is only rarely granted since existence or nonexistence of negligence is to be determined by appropriate trier of fact's application of "resonable man" standard and therefore genuine issues of fact are almost always presented." (Emphasis added.)

Further the St. Cyr case stated,

> "Issues concerning negligence, such as observance of due care ... are ordinarily not susceptible to summary adjudication."

See the Florida case on malpractice and punitive damages, Ray-Mar Beauty College, Inc. v. Ellis Rubin Law Offices, 475 So. 2d 718, 3rd Dist. Court of Appeal of Florida, 1985, which states,

> "Evidence was sufficient for jury on punitive damages claim in legal malpractice action against law firm and individual attorney." (Emphasis added.)

The instant case should be remanded for trial with the issue of punitive damages reinstated.

II. The State of Alabama's long arm statute [Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) was held to be invalid and repugnant to the U.S. Constitution, Fifth Amendment due process when in fact and law in personam jurisdiction was not lacking in the U.S. District Court, Northern District of Alabama, Western Division, since the underlying case, 87-6-CIV 17 (b) should NOT have been transferred to Florida for lack of in personam jurisdiction due to minimum contacts of Defendant with the State of Alabama i.e. the U.S. Court of Appeals, Eleventh Circuit held state statute [Alabama long arm statute, Alabama Rules of Civil Procedure, 4.2 a(2)(I)] repugnant to U.S. Constitutuion, Amendment V, due process because affirmed summary judgment.

The constitutional issue involving the outer limits of the federal due process of the Fifth Amendment to the United States Constitution was misinterpreted by the Honorable Judge Sam C. Pointer in a diversity of citizenship case involving the Standard of Sullivan, (New York Times Co. v. Sullivan, 273 Ala. 656, 144 So.

2d 25 (1962, rev'd on other grounds, 376 U.S. 254 (1964), doctrine as to the extension of Alabama's long arm jurisdiction (Alabama Rules of Civil Procedure 4.2 is Alabama long arm statute) to the outer limits of due process when the Honorable Sam C. Pointer, Jr., U.S. district Judge transferred the instant underlying case (87-6-CIV F.M. 17 (b) in U.S. District Court, Middle District of Florida, Fort Myers Division) for alleged lack of in personam jurisdiction; therefore, the instant case should be transferred back to the forum state of Alabama. See Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I).

The comments on the Rule 4.2 a(2)(I) in the Alabama Rules of the Court, 1986 Desk Copy, p. 31 states,

> "This subparagraph (I) is but a restatement of the current definition of the federal constitutional standard."

The Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) states,

> "(I) otherwise having some minimum contacts with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action."...

See Champ Lyons "In Personam Jurisdiction in Federal Court," p. 13 in Federal Practice Seminar, School of Law, The University of Alabama, The Alabama State Bar, which states,

> "Complexities of election between state of federal law as controlling on the question of the reach of process initiated pursuant to state law under FRCP 4 are happily short circuited by reason of Alabama's view that the reach of the Alabama "long arm" is coextensive with the outer limits of due process. New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962), rev'd on other grounds, 378 U.S. 254 (1964). Furthermore, the necessity for resort to a close analysis of Alabama's transactional bases for an attempt to assert jurisdiction over the person over a non-resident as a prelude to the application of federal standards dealing with due process is also eliminated by reason of Alabama's broad phraseology in connection with assertion of jurisdiction over nonresidents. ARCP 4.2, dealing with bases and methods of service outside of the State of Alabama, delineates specific activity which lead to a prospect for legal liability, and after the delineation of various specific types of activity, concludes with a general characterization of "otherwise having some minimum contact with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action" ARCP 4.2 (a)(2)(I)...

The Defendant, Robert J. Shapiro, in the underlying case, in which he as an attorney in a 42 U.S.C. § 1983 action with pendent libel, made minimum contacts with the state

of Alabama to allow federal court (U.S. District Court ofr the Northern District of Alabama) to have in personam jurisdiction, i.e. Mr. Shapiro had minimum contacts with the state of Alabama through correspondence enclosing retainer contract and telephone calls from the state of Florida to the state of Alabama by calling Julia Asam in Montgomery, Alabama from Florida concerning his legal representation.

Defendant Shapiro's letter dated June 1, 1982 to Julia Asam in Alabama with enclosed proposed retainer contract and Defendant Shapiro requested $2,000 was a definite business transaction. [See 87-390 APPENDIX C and D for details, The Supreme Court of the United States case].

See Alabama Rules of the Court, 1986 Desk Copy, p. 32 which states

> ..."federal cases show that transacting business in Alabama would include such factors as ...correspondence with persons in Alabama (Calagaz v. Calhoun, 309 F. 2d 248, 256 (5th Cir. 1962)... (Emphasis added.)

To consider the threshold issue of whether the U.S. District Court for the Northern District Court in Alabama lacks in personam jurisdiction over defendant please consider the following cases.

See Bucks County Playhouse v. Bradshaw, 377 F. Supp. 1203 (1983), a U.S. District Court, E.D. Pennsylvania case, held that

> "To determine if personal jurisdiction exists over nonresident defendant, district court must look to law of state in which it sits."

Also see Arrowsmith v. United Press International, 320 F. 2d 219, 223 (2d cir. 1963); Partin v. Michaels Art Bronze Co. 202 F. 2d 541, 542 (3rd Cir. 1953).

The Bucks County Playhouse v. Bradshaw 577 F. Supp. 1203 at 1208 states,

> "In essence, an inquiry into the personal jurisdiction of a court under the long-arm statute raises but two questions:
> 1) What are the contacts of the defendant with the forum state which give rise to the cause of action complained of and
> 2) Are the contacts constitutionally sufficient under the due process clause."

Alabama law is broader than the Pennsylvania law stated in Bucks County Playhouse v. Bradshaw, supra. The reach of the Alabama long

arm is coextensive with the outer limits of due process. See New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 24 (1962), rev'd on other grounds, 376 U.S. 254 (1964). See quote from Champ Lyons "In Personam Jurisdiction in Federal Court." on p. 25 of Brief.

State law is defined in Hoffman v. Chandler, 431 So. 2d 499, 502 (Ala. 1983) which states,

> "(1) The term 'State law' includes all laws, decisions, rules, regulations, or other State Action having the effect of law, or any State."

See Dillon Equities v. Palmer & Cay, Inc. 501 So. 2d 459 (Ala. 1986) which states,

> "Physical presence in state is not prerequisite to effective service of process on nonresident defendant; what is required is that out-of-state resident have some minimum contacts with the state so that maintenance of suit does not offend traditional notions of fair play and substantial justice. Rules of Civ. Proc., Rule 4.2 (a)(2)(I); U.S.C.A. Const. Amend. 14. (Emphasis added.)

Also see DeSotacho, Inc. v. Valnit Industries, Inc. 350 So. 2d 447 (Ala. 1977) and Burger King Corp. v. Rudzewica, 471 U.S. 462 (1985).

The cause of action (negligent legal malpractice in the instant underlying case --

87-6-CIV F.M. 17 (b) in the U.S. District Court for the Middle District of Florida, Fort Myers Division) arose out of the minimum contact of correspondence from the Defendant Shapiro to Dr. Asam in Montgomery, Alabama. [See 87-390, The Supreme Court of the United States, brief Appendix G] In this letter dated, Nov. 2, 1984, Mr. Shapiro demanded $5000 unearned money or he would withdraw from the case with 48 hours since the letter was received in Alabama as evidenced by the return receipt 48 hours before Defendant Shapiro said he would withdraw as attorney unless he received $5000 and Mr. Shapiro did withdraw within 48 hours, and said minimum contact was a breach of contract after Mr. Shapiro had received over $12,000 to represent client, Julia Asam, and such breach of contract would justify in personam jurisdiction. (See Alabama Rules of Civil Procedure, Rule 4.2 a (2)(I).

Therefore, Mr. Shapiro made the minimum contact with the forum state, Alabama, which gave

rise to the cause of action complained of in the Complaint of this instant case.

See Cagle v. Lawson 445 So. 2d 564 (Ala. 1984), which states,

> "Where there are a minimum of contacts, and cause of action arises out of the contracts, Supreme court considers the quality and nature of activity in Alabama in order to determine whether maintenance of the suit in Alabama will offend traditional notions of fair play and substantial justice..."

See View-All Inc. v. United Parcel Service, 435 So. 2d 1198 (Ala. 1983) that the court quoting Professor Moore, summarized the correct constitutional requirements in this area:

> "The first requirement is that there must be some minimum contact with the state which results from an affirmative act of defendant. But it is NOT necessary that the defendant have been in the state..." (Emphasis added.)

III. The 22 issues (from 88-3026, U.S Court of Appeals, Eleventh Circuit, Appellant Brief) in #III issues of this Brief incorporating these 22 issues into this appeal, will be discussed in a Merit's brief clearly showing that this negligent legal malpractice action

in this diversity of citizenship case should have been tried by a jury because of disputed facts and as a matter of law the Summary Judgment for Defendants should have been reversed and the case remanded for trial by jury. The original denial of Plaintiff's summary judgment (R2 49) should have been reversed and the case remanded for the damages issues.

As of the writing of the 88-3026 Brief, the Defendant owed the Plaintiff/Appellant in compensatory damages $301,742.00 based on the equivalent loss of wages as a teacher in the underlying § 1983 action (82-91 CIV F.M. 17 in U.S. District Court, Middle District of Florida, Ft. Myers Division, 86-3142 in the U.S. Court of Appeals, 11th Circuit, and 87-531 in the Supreme Court of the United States as appeal but considered certiorari which was denied.) A new compensatory damages amount can be calculated whenever the Plaintiff receives a new pay schedule for teachers.

CONCLUSION

The U.S. Court of Appeals, Eleventh Circuit, was clearly erroneous in affirming the trial court's summary judgment for defendants because the U.S. Court of Appeals, Eleventh Circuit, failed to rule according to the record which clearly showed disputed facts (see pp. 7-10 of this brief) and the U.S. Court of Appeals, Eleventh Circuit failed to rule according to 11th Cir. R. 36-1. The U.S. Court of Appeals, Eleventh Circuit, failed to rule according to law (see Argument in this case) because the Defendant failed to prove there was no genuine material issue of fact.

Alternatively, the denial of Summary Judgment for Plaintiff filed March 9, 1987 (R2 49) OR the denial of Default Judgment order (R1 20) Feb. 19, 1987, should be reversed and the case remanded for trial on issue of damages (both compensatory and punitive) because the liability issue was deemed admitted when the

Defendant untimely filed his Answers and Requests for Admissions. (See #III issue in instant case that incorporated all the issues of the U.S. Court of Appeals, Eleventh Circuit Appellant Brief and is part of the record of the instant appeal). The punitive damages issue should be reinstated because defendant untimely filed his Motion to Strike and the Defendant clearly acted in bad faith and malpracticed the Plaintiff by demanding within 48 hours $5000 of unearned and unowed money or he would withdraw as attorney after receiving over $12,000 attorney fees.

Compensatory damages are $301,742.00 which is the equivalent loss of wages of Plaintiff as a teacher at the Ph.D. rate in the 42 U.S.C. §1983 underlying case. If case is reversed and remanded, the Motion to Join Parties should be reversed to allow defendants, Mr. Neil C. Spector, and the law firm Spector & Shapiro. (R4 100).

District Court, Northern District of Alabama was repugnant to the U.S. Constitution due process of the 5th Amendment since the Court held the Alabama long arm statute, ARCP, Rule 4.2 a (2)(I) to be invalid when the underlying case (87-6-CIV F.M. 17 (b) was transferred for alleged lack of in personam jurisdiction when there was minimum contacts and as a matter of law (see law in Argument) the instant diversity of citizenship case should not have been transferred.

The instant case should be remanded to the U.S. District Court, Northern District of Alabama or the U.S. District Court, Middle District of Alabama because the decision of U. S. trict of Alabama or Northern District of Alabama because the decision of U.S. Court of Appeals, Eleventh Circuit, is clearly erronecus and the Court failed to rule according to its own rule (11th Cir. R. 36-(d).

U.S. Court of Appeals, Eleventh Circuit by affirming and ignoring own Rule 36-1-(d), i.e. ignoring record showing disputes and ignoring State Statute [Alabama long arm statute, Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I)], the U.S. Court of Appeals. Eleventh Circuit, was holding a state statute [Alabama long arm statute, Alabama Rules of Civil Procedur, Rule 4.2 a(2)(I)] REPUG NANT TO THE U.S. CONSTITUTION, AMENDMENT V due process -- the instant case should not have been transferred in a diversity of citizenship (negligent legal malpractice) case from federal court in Alabama, U.S. District Court, Northern District of Alabama, Western Division, to federal court in Florida, U.S. District Court, Middle District of Florida, Fort Myers Division. Because the U.S. Court of Appeals, Eleventh Circuit by affirming as discussed above, and holding a state statute to be repugnant to the U.S. Constitution, the appeal was filed under 28 U.S.C. § 1254 (2). See p. 9 and 54 in Appellant Brief, 88-3026, concerning transferring case.

In Alternative, if case is not considered as an appeal, please consider as Writ for Certiorari.

Dated this 17th day of November, 1988.

Respectively submitted,

Julia L. Asam

Julia L. Asam, Ph.D., J.D.
P.O. Box 1022
University, Alabama 35486

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above JURISDICTIONAL BRIEF was sent to the Honorable Sam C. Pointer, U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama, 35203; Honorable Elizabeth A. Kovachevich, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S, District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St. N.W., Atlanta, Georgia 30303; Mr. John D. Shofi, and Ms. Ann O'Hern, Attorneys, Marlow, Shofi et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629; INAPRO, P.O. Box 2353, New York, New York 10272 and Mr. Robert J. Shapiro, 13822 Creek Dr., Tampa, Florida 33618 this 17th day of November 1988.

Julia L. Jason

APPENDIX

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APPENDIX A Judgment entered on August 24, 1988 affirming summary judgment, and there was no opinion but stated, "Per Curiam: affirmed. See 11th Cir. R. 36-1." [When see 11th Cir. R. 36-1 - note Court did not rule according to own rule since failed to rule according to record which clearly showed disputed facts]. 1a

APPENDIX B Notice of Appeal filed on November 8, 1988 with attachments. 2a

APPENDIX C CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED..... 10a

APPENDIX A

Filed and Entered August 24, 1988

[On left "DO NOT PUBLISH" but no opinion]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

88-3026

Non-Argument Calendar

D.C. Docket No. 87-00006

JULIA L. ASAM,

Plaintiff-Appellant,

versus

ROBERT J. SHAPIRO,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

(August 24, 1988)

Before HILL, VANCE and COX, Circuit Judges.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1

"Costs taxed against plaintiff-appellant."

Judgment Entered: August 24, 1988

For the Court: Miguel J. Cortez, Clerk

APPENDIX A (CONTINUED)

By: s/ Karleen McNalt

Deputy Clerk

ISSUED AS MANDATE: Sept 16, 1988

[Certified[A True Copy Attested: Clerk, U.S. Court of Appeals, Eleventh Circuit

By: s/Debbie Cordell

Deputy Clerk

Atlanta, Ga.

APPENDIX B

Notice of Appeal filed November 8, 1988.

IN THE U.S. COURT OF APPEALS

ELEVENTH CIRCUIT

JULIA L. ASAM, Ph.D., J.D.

Plaintiff/Appellant

vs.

ROBERT J. SHAPIRO,

Defendant/Appellee

Case no. 88-3026

NOTICE is hereby given that Julia L. Asam, Ph.D., J.D., (Julia McCain Lampkin Asam),

APPENDIX B (CONTINUED)

Plaintiff/Appellant,above named, hereby appeals to the Supreme Court of the United States from the order of judgment entered on August 24, 1988 by the U.S. Court of Appeals, Eleventh Circuit (See Exhibit 1 [A] attached) and the denial of Appellant's Motion to Supplement the Record on Appeal (Exhibit 2 [B] attached) and further appeals this order of judgment entered on August 24, 1988 which affirmed the lower court to be clearly erroneous based on the 11th Cir. R. 36-1 because the summary judgment below was not supported by the record because disputed facts in a negligent legal malpractice action when the attorney in the underlying case, Mr. Robert J. Shapiro, defendant/appellee, demanded $5000 of unearned money within 48 hours or he would withdraw from the underlying case 86-3142 (87-531 in the Supreme Court of the United States) after Mr. Shapiro, had received over $12,000 to represent client (Julia Asam).

APPENDIX B (CONTINUED)

The Supreme Court of the United States has jurisdiction under the following:

28 U.S.C. §1254; 28 U.S.C. §2106; 42 U.S.C. §1983 (underlying case since negligent legal malpractice case under 28 1332

Notice of Appeal to Supreme Court of the United States from U.S. Court of Appeals, Eleventh Circuit ... p. 2

diversity of citizenship); 28 U.S.C. §1343 (3) and 28 U.S.C. §1651 (reference 87-3184 and 87-7252 in U.S. Court of Appeals Eleventh Circuit).

Proof of Service attached as well as Certificate of Service.

Jurisdictional Briefs (40 copies) will be sent to the Supreme Court of the United States together with the $200 docket fee.

Respectfully submitted,

s/ Julia Asam

Julia L. Asam, Ph.D., J.D.

P.O. Box 1022

University, Alabama 35486

APPENDIX B (CONTINUED)

Attachments

Exhibits 1 and 2

Proof of Service

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Notice of Appeal was sent to the Honorable Sam C. Pointer, U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama 35203; Honorable Elizabeth A. Kovachevich, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, The Supreme Court

"Notice of Appeal to Supreme Court of the United States from U.S. Court of Appeals, Eleventh Circuit p.3

of the United States, U.S. Supreme Court Building, 1 First St. N.E., Washington, D.C. 20543; Mr. John D. Shofi, and Ms. Ann O'Hern,

APPENDIX B (CONTINUED)

Attorneys, Marlow Shofi, et al., 2907 bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629, INAPRO, P.O. Box 2353, New York, New York 10272 and Mr. Robert J. Shapiro, 13822 Creek Dr., Tampa, Florida 33618 this 4th day of November 1988.

s/ Julia L. Asam

Exhibit A [Exhibit 1] is APPENDIX A p. 1a.

Exhibit B p. 1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 88-3026

[stamped on right] U.S. Court of Appeals, Eleventh Circuit, FILED APR 19, 1988, Miguel J. Cortez, Clerk.

JULIA L. ASAM,

Plaintiff-Appellant,

versus

ROBERT J. SHAPIRO

APPENDIX B (CONTINUED)

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

ORDER:

Appellant's motion to supplement the record on appeal is denied.

s/ James C. Hill

United States Circuit Judge

Exhibit B p. 2

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Filed U.S. Court of Appeals, Eleventh Circuit, Mar 17, 1988, Miguel J. cortez, Clerk, [stamped on right]

[stamped in center] U.S. Court of Appeals, Received Mar. 17, 1988, Atlanta, GA.

JULIA L. ASAM,

Plaintiff/Appellant,

v.

ROBERT J. SHAPIRO

Defendant/Appellee

APPENDIX B (CONTINUED)

MOTION TO SUPPLEMENT THE RECORD

Comes now Julia L. Asam, Ph.D., J.D., Pro Se, Plaintiff/Appellant and moves this Honorable Court to Supplement the Record in Case no. 88-3026 with the following briefs by Julia Asam.

The briefs are Supreme Court of the United States cases related to the instant case 88-3026.

1. 87-345 Jurisdictional Statement and/or Petition.

2. 87-345 Petition for Rehearing

3. 87-390 Jurisdictional Statement and/or Petition

4. 87-390 Petition for Rehearing

5. 87-531 Jurisdictional Statement (underlying case to the instant case no. 88-3026).

6. 87-531... Brief Opposing Motion to Dismiss.

7. 87-531 Peition for Rehearing

Each of the briefs above were sent to the U.S. Court of Appeals for the Eleventh Circuit at the time of briefing as a reference

APPENDIX B (CONTINUED)

copy to 87-3184, 87-7252, or 86-3142.

The Plaintiff/Appellant needs to reference the above briefs when writing the Appellant Brief for 88-3026 because the issues in the Appellant Brief 88-3026 are related to issues in the above briefs written by Julia Asam. [End of first page].

Page 2 Motion to Supplement the Record

The plaintiff/Appellant would appreciate a ruling on this motion to Supplement the Record by March 28, 1988 so that the plaintiff/Appellant would be able to timely file a Motion to Expand the Number of Pages of the Appellant Brief. It will not be necessary to write a Motion to Expand the Number of Pages of the Appellant Brief if the Appellant is allowed to reference the above listed "summary" briefs on issues in the instant case no. 88-3026.

Respectively submitted,

s/Julia L. Asam

APPENDIX B (CONTINUED)

Julia L. Asam, Ph.D., J.D.

Pro Se

P.O. Box 1022

University, Alabama 35486

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Motion to Supplement the Record was sent to Ms. Ann O'Hern, Attorney, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629 this 15th day of March 1988.

s/ Julia L. Asam

Exhibit B p. 3

APPENDIX C

CONSTITUTIONAL PROVISIONS

AND STATUTES INVOLVED

United States Constitution, Amendment I.,

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

APPENDIX C (CONTINUED)

right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

United States Constitution, Amendment V

in pertienent part, as follows:

"No person shall... be deprived of life, liberty or property, without due process of law..."

United States Constitution, Amendment XIV

"Section 1, All persons born or natrualized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside; No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor the equal protection of the laws."

United States Constitution, Amendment VII

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,

APPENDIX C (CONTINUED)

and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

FEDERAL STATUTES

42 U.S.C. §1983

"Every person who, under color of any statute, ordinance, regulation, custom, usuage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

28 U.S.C. §1343(3)

3) To redress the deprivation, under color of any State law, statute, ordinance regulation, custom or usuage, or any right, privilege or immunity secured by the Constitution

APPENDIX C (CONTINUED)

of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

28 U.S.C. §2106

"The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of court lawfully brought before it for review, and many remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

28 U.S.C. §1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

APPENDIX C (CONTINUED)

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted the Federal questions presented;"

28 U.S.C. §1651

"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usuages and principles of law.

ALABAMA STATUTE

Alabama Long Arm Statute

Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) states,

"(I) otherwise having some minimum contacts with this state, and under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action."...

Supreme Court, U.S.
FILED
DEC 19 1988

No. 88-836

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JULIA McCAIN LAMPKIN ASAM, Ph.D., J.D.
Plaintiff/Appellant

vs.

ROBERT J. SHAPIRO
Defendant/Appellee

APPEAL FROM THE U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

MOTION TO DISMISS/OR AFFIRM FROM FEDERAL COURT

John N. Jenkins, Esquire;
Ann O'Hern, *Attorney at Law*
Marlow, Shofi, Smith, Hennen,
Smith, & Jenkins, P.A.
P.O. Box 10430
Tampa, Florida 33679-0430
813-831-5599

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(Long Arm Statute)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. 88-836

In re Robert J. Shapiro, *Appellee*

MOTION TO DISMISS/OR AFFIRM FROM FEDERAL COURT

Appellee, in the above title case moves to dismiss (and/or affirm) on the grounds that the appeal and questions presented therein concern matters so unsubstantial as to need no further argument. Appellee would state that the questions presented are unsubstantial, there is an absence of any conflicts of opinions within the case, the decision of the courts below is obviously correct and, therefore, no further review is warranted.

STATEMENT OF FACTS

This action involves a suit for legal malpractice brought by Appellant against Appellee. The underlying case in this action pertained to a suit against the Lee County School Board as a result of her termination in 1978. Subsequent disputes arose between Appellee and Appellant with respect to the Appellee's representation of the Appellant in her action against the Lee County School Board. In November 1984, after several demands had been made by the Appellee upon the Appellant for further retainer in order to fully prosecute the case, Appellee made Motion to Withdraw from the case. Said Motion was granted and Appellee withdrew as attorney of record. Appellant received ninety (90) days continuance in order to obtain new counsel, and subsequently prosecuted the case per se. Appellant did not prevail in prosecuting the case, and subsequently on October 30, 1986, brought action charging Appellee with breach of contract, fraud, and

negligence. On November 6, 1987, Appellee made Motion for Summary Judgment in this case. Appellee contended that there were no issues of genuine fact left to be resolved and, therefore, as a matter of law Summary Judgment should be granted. On December 21, 1987, Appellee's Motion for Summary Judgment was granted by the Honorable Elizabeth Kovachevich in the United States District Court, Middle District of Florida, Tampa Division. Judge Kovachevich found that as a matter of law there were no genuine issues of material fact, which were left to be resolved that would preclude a Summary Judgment.

The Honorable Elizabeth Kovachevich cited *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986) for the proposition that Federal Rule Civil Procedure 56(c) mandated the entry of a Summary Judgment after adequate time for discovery had gone forth, and that there was a failure on part of one of the parties to establish existence of an element essential to their case. The Honorable Judge examined all issues with respect to the case, and determined that there were no genuine issues of material fact which would preclude a Summary Judgment with respect to issue of negligence on the part of Appellee, the issue of fraud on the part of the Appellee, the issue of breach of contract of the Appellee and a breach of fiduciary duty on the part of the Appellee. Final Summary Judgment was granted.

Appellant appealed Judge Kovachevich's opinion to the Eleventh Circuit Court of Appeals and said decision by the Middle District of Florida was per curiam affirmed without written opinion on August 24, 1988.

ARGUMENT

Appellant has presented no substantial federal question for which Appellate or certiorari review should be granted. Furthermore, two lower courts have concurred in the opinion that there is no genuine issue of material fact which would have precluded a Summary Judgment in this case, and the decisions of the courts below are obviously correct and, therefore, this case warrants no further review.

Appellant has attempted to raise three questions in her Jurisdictional Brief which would support her Appeal/Writ of Certiorari in the above mentioned case and requested an extraordinary writ with respect to a fourth issue. The questions presented by Appellant are respectfully rephrased by this Appellee as:

1. Whether Appellant's Fifth Amendment rights under the Constitution were violated when district court and circuit court both concurred that there were no genuine issues of material fact, which would preclude Summary Judgment in this case.

2. Whether Appellant's Seventh Amendment rights under the United States Constitution were violated when both district court and circuit court below pursuant to Rule 56(c) Federal Rules of Civil Procedure determine that there were no genuine issues of material fact and, therefore, granted Summary Judgment in this matter precluding a trial by jury on Appellant's issues.

3. Whether the refusal by the Northern District of Alabama court to grant jurisdiction under the State of Alabama's Long-Arm Statute constituted a decision wherein Alabama's long-arm statute was held invalid and unconstitutional.

4. Whether an extraordinary writ should be issued to force the court below the supplement the record as requested by Appellant in Case No. 88-3026.

Appellants argument with respect to a violation of her Fifth Amendment rights is non-substantial and without merit.

With respect to the first issue presented by Appellant that her Fifth Amendment Due Process rights were violated when the

courts below granted Summary Judgment in this matter, Appellee would respectfully cite that there is no substantial federal question presented by Appellant in this matter and, furthermore, the decisions of the court below were correct and, therefore, should be affirmed. Appellant has stated that courts below did not rule according to law when they granted Summary Judgment, because of Rule 56(c) Federal Rules of Civil Procedure. Under Rule 56(c), Appellee was entitled to a Summary Judgment upon a showing that there were no genuine issues of material fact. Rule 56 must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried by a jury, but also for the rights of persons opposing such claims and defenses to demonstrate, in the manner provided by the Rule prior to trial, that the claims and defenses have no factual basis. *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986).

The United States District Court for the Middle District of Florida in a well written opinion ruled that there were no genuine issues of material fact and, therefore, Appellee was entitled as a matter of law to a Summary Judgment in this matter. Summary Judgment procedure is properly regarded not as a disfavored procedural shortcut but, rather, as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. Since there were no genuine issues of material fact to be resolved, it was proper for that trial court to grant Summary Judgment. *Matsushita Electric Industrial Company, Ltd. v. Zenith Radio Corporation,* 475 U.S. 574 (1986). *Celotex Corp. v. Catrett,* 477 U.S. at 327. Appellant's contention that due process was denied under her Fifth Amendment constitutional rights, therefore, is without merit. Appellant's further statement that the Eleventh District Court did not read the record upon Appeal is unsupported and, therefore, without merit.

This Court has held that it would not undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error. *Beronyi v. District Director, Immigration and Naturalization Service,* 385

U.S. 630 (1967); *Pick Manufacturing Company v. General Motors Corp.*, 299 U.S. 3 (1936); *Graver Tank & Manufacturing Company v. Linde Air Products Company*, 336 U.S. 271 (1949). Two courts have reviewed this case and determined that Summary Judgment was appropriate and, therefore, the question presented by the Appellant is unsubstantial and does not warrant review by this court.

Appellant's Seventh Amendment rights were not violated by the granting of a Summary Judgment.

Appellant's contention that her Seventh Amendment right to a trial by jury has been violated through issuance of a Summary Judgment is also without merit. Rule 56(c) Federal Rules of Civil Procedure specifically allows the granting of Summary Judgment when there are no genuine issues of material fact. Furthermore, this Court held that there is no right in a civil case to a trial by jury, unless and except so far as there are issues of fact to be determined. *In re Peterson*, 253 U.S. 300 (1920). Thus, where Summary Judgment procedure is appropriate, no jury trial is warranted.

Alabama's Long-Arm Statute was not deemed unconstitutional in the court below and Appellants argument is without merit.

With respect to the third issue presented by Appellant as to whether the refusal by the Northern District of Alabama court to grant jurisdiction under the State of Alabama's Long-Arm Statute was invalid, Appellant has previously attempted to, through Writ of Mandamus number 390 in the Supreme Court, obtain review by this Honorable Court. This attempt pertained to a ruling by Honorable Sam C. Pointer, U.S. District Judge in the U.S. District Court for Northern Alabama refusing to grant Alabama Long-arm jurisdiction to this case and transferring the case to the Middle District of Florida for consideration. Judge Pointer specifically found that the minimum contacts required by the Alabama Long-arm Statute were not present and, therefore, long-arm jurisdiction was not appropriate. Nowhere in Judge Pointer's opinion is there any ruling that the Alabama

Long-arm Statute is repugnant to the Constitution, or that the Alabama Long-arm Statute is unconstitutional, therefore, review of by this Court on that issue is unsubstantial, has previously been ruled on, and does not warrant further review. Indeed, that the formal pronouncements of this Court upon causes submitted to it should enjoy every possible degree of finality and conclusiveness would seem to be a necessary predicate to the proper functioning of the Court itself.

Appellant's request for an Extraordinary Writ should not be granted because Appellant's argument is non-substantial.

With respect to Appellant's attempts by extraordinary writ to have this Court review the opinion below that her Motion to Supplement the Record would not be granted, this Motion is without merit. Federal Rules of Appellate Procedure 10(e) dealing with modification of the record, does not give a court the authority to admit on appeal a document, file, or series of papers which were neither introduced into evidence nor made part of the record in the trial court.

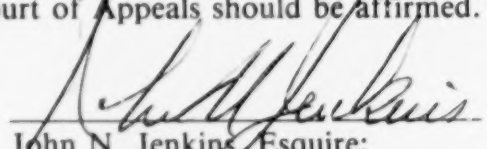
Under Federal Rules of Appellate Procedure 10(e) as to modification of the record, the Appellate Court has discretion upon determination of whether or not the suggested items to supplement the record are material to either party and are necessary to complete the record. Appellant's record upon Appeal was complete without the inclusion of the Supreme Court Writs of Mandamus for which she requested supplementation of the record. This Court has held that such extraordinary writs as requested here are reserved for only extraordinary causes. *Platt v. Minnesota Mining & Manufacturing Company,* 376 U.S. 240 (1964). Such a writ is to be used only in an exceptional case where there is a clear abuse of discretion or usurpation of judicial power. *LaBuy v. Howes Leather Co.,* 352 U.S. 249 (1957). Therefore, since said ruling was discretionary with the Eleventh Circuit of Appeals, and since no abuse of discretion has been shown, no extraordinary writ should be granted.

Lastly, Appellee respectfully cites that the Supreme Court of the United States does not try facts of cases de novo. *United*

States v. E.I. DuPont De Nemours & Co., 351 U.S. 377 (1956). Further, on review of Summary Judgment, this Court has noted that it is not the function of this Court to speculate as to ultimate findings of fact. *Fortner Enterprises, Inc. v. U.S. Steel Corp.*, 394 U.S. 495 (1969). Since this case turns merely on an appraisal of evidence and does not involve an issue of importance to the operation of the Federal system, Appellee respectfully contends that certiorari should not be granted.

CONCLUSION

For these reasons the Petition for Writ of Certiorari/Request for Appeal should be dismissed or, in the alternative, the opinion of the Eleventh Circuit Court of Appeals should be affirmed.



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Supreme Court, U.S.
FILED
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JOSEPH E. SPANIOL, JR.
CLERK

(3)

No. 88-836

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JULIA McCAIN LAMPKIN ASAM, Ph.D., J.D.

Plaintiff/Appellant

vs.

ROBERT J. SHAPIRO

Defendant/Appellee

APPEAL FROM THE U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

REPLY BRIEF AND MOTION TO STRIKE APPELLEE'S "MOTION TO DISMISS/ OR AFFIRM..." BECAUSE NO VALID GROUNDS TO DISMISS A NEGLIGENT LEGAL MALPRACTICE ACTION IN DIVERSITY OF CITIZENSHIP CASE WRONGFULLY TRANSFERRED

Julia McCain Lampkin Asam, Ph.D.,J.D.
ATTORNEY AT LAW
P.O. Box 1022
University, Alabama 35486

59 pp

QUESTIONS PRESENTED

I. Whether the Plaintiff's 5th and 7th Amendment rights under the U. S. Constitution have been violated because the lower federal courts failed to rule according to the Federal Rules of Civil Procedure, Rule 56(c), when the record clearly shows there is a dispute in this negligent legal malpractice action in a diversity of citizenship case, i.e. the Defendant/Appellee failed to show in the record that there was no genuine issues of material fact, and summary judgment should have not been granted when disputed facts (see Argument) and a demand for jury trial; therefore, the U. S. Court of Appeals, Eleventh Circuit DID NOT rule according to 11th Cir. R. 36-1.

Mr. John N. Jenkins is representing for the first time the insurance carrier and the Defendant, Mr. Robert J. Shapiro and Mr. Jenkins does not have his facts straight and has not clearly answered the questions presented when

QUESTIONS PRESENTED (CONTINUED)

Mr. Jenkins rewrote the questions presented to mislead the Court. The point is the Defendant failed to demonstrate that there was no genuine issue of material fact and a negligent malpractice case should have been tried before a jury. The questions presented by the Plaintiff/ Appellant will be presented and then the rephrased question by Mr. Jenkins will be added under each of the questions presented by the Appellant to avoid confusion.

"1. Whether Appellant's Fifth Amendment rights under the Constitution were violated when district court and circuit court both concurred that there were no genuine issues of material fact, which would preclude Summary Judgment in this case." [The lower courts only went by the alleged facts in the Defendant's Brief instead of checking the true disputed facts as shown in the record and clearly discussed in the Jurisdictional Statement. See Argument for law and further discussion will be made showing Fifth Amendment rights of Appellant were clearly and

QUESTIONS PRESENTED (CONTINUED)

substantially violated in this diversity of citizenship case.]

"2. Whether Appellant's Seventh Amendment rights under the United States Constitution were violated when both district court and circuit court below pursuant to Rule 56(c) Federal Rules of Civil Procedure" [The lower courts failed to act according to the Rule 56(c) because of the disputed facts concerning this negligent legal malpractice action in diversity of citizenship case] "that there were no genuine issues of material fact and, therefore, granted Summary Judgment in the matter precluding a trial by jury on Appellant's issues." See Argument for law clearly showing that the Appellant's Seventh Amendment rights under the U.S. Constitution were clearly violated.

QUESTION #1 by Appellant is grounds for Writ for Certiorari and QUESTION #2 by Appellant is grounds for Appeal. See Jurisditional Statement. QUESTION #3 would be throughly written in Merits Brief if requested.

QUESTIONS PRESENTED (CONTINUED)

II. Whether the State of Alabama's long arm statute (Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) was held to be invalid and repugnant to the U.S Constitution, Fifth Amendment due process when in fact and law in personam jurisdiction was not lacking in the U.S. District Court, Northern District of Alabama, Western Division, since the underlying case, 87-6-CIV F.M.17(b) should NOT have been transferred to Florida for lack of in personam jurisdiction due to minimum contacts of Defendant with Alabama i.e. Whether U.S. Court of Appeals, Eleventh Circuit held state statute [Alabama long arm statute, Alabama Rules of Civil Procedure, 4.2 a(2)(I)] repugnant to U.S. Constitution, Amendment V, due process because affirmed summary judgment?*

"3. Whether the refusal by the Northern District of Alabama court to grant jurisdiction under the State of Alabama's Long Arm Statute"[Alabama

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*See Appendix D and F-I, showing minimum contacts; therefore Long Arm Statute should not have been considered invalid and transfer should not have been made for alleged lack of in personam jurisdiction.

QUESTIONS PRESENTED (CONTINUED)

Rules of Civil Procedure, Rule 4.2 a (2)(I)] constituted a decision wherein Alabama's long-arm statute was held invalid and unconstitutional."

The Alabama's Long Arm Statute was clearly considered invalid and unconstitutional in the instant case when the instant action was wrongfully transferred from the U.S.District Court, Northern District of Alabama in a diversity of citizenship case to the U.S. District Court, Middle District of Florida when minimum contacts were clearly made by Mr. Shapiro with the State of Alabama by his correspondence, phone calls, etc. concerning representing his former client, Dr. Asam. Also See 87-390 which was a Writ for Mandamus and was not considered because of discretion of the Court and was not ruled on concerning the merits of the case clearly showing minimum contacts made by Mr. Shapiro and the long Arm Statute being considered invalid and unconstitutional. Further, the U.S. Court of Appeals, Eleventh Circuit in affirming the lower court further considered the Alabama's Long Arm Statute to be invalid and unconstitutional and is grounds for this instant

QUESTIONS PRESENTED (CONTINUED)

case to be considered as an appeal.* See Argument for Law and further discussion showing that The Supreme Court of the United States has jurisdiction under 28 U.S.C. §1254.

ORAL ARGUMENT WAS REQUESTED AND NEEDED TO UNDERSTAND THE COMPLEXITIES OF THIS INSTANT CASE.

III. The Plaintiff/Appellant incorporates all the issues in Case no. 88-3026 in the U.S. Court of Appeals, Eleventh Circuit, and related issues in 87-390 and 87-345, The Supreme Court of the United States cases, which should have been added as supplement to the record since Plaintiff/Appellant is also appealing the denial of "Motion to Supplement the Record in the U.S. Court of Appeals, Eleventh Circuit.

4. Whether an extraordinary writ should be issued to force the court below the (should be "to") supplement the record as requested by Appellant in Case No. 88-3026. This issue was added to request the Court below to add the requested documents if the case is remanded.

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*Since the instant case is a diversity of citizenship case with negligent legal malpractice, Footnote continued on p. x.

PARTIES BELOW

All parties below are parties to this petition.

The Plaintiff/Appellant is Julia L. Asam, (Julia McCain Lampkin Asam).

The Defendants/Appellees are Hon. Sam C. Pointer, U.S. District Judge, U.S. District Judge, Northern District of Alabama,Western Division, U.S. Courthouse, Birmingham, Alabama 35203; Hon. Elizabeth A. Kovachevich, U. S. District Judge, U.S. District Court, Middle District of Florida 33602; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia, 30303; INAPRO, P.O. Box 2353, New York, New York 10272, Mr. John D. Shofi, and Ms. Ann O'Hern, Attorneys, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Building, Tampa, Florida 33629, and Mr. Robert J. Shapiro, 13822 Cherry Creek Dr., Tampa, Florida 33618.

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I. The Plaintiff's 5th and 7th Amendment rights under the U.S. Constitution have been violated because the lower federal courts failed to rule according to the Federal Rules of Civil Procedure, Rule 56(c), when the record clearly shows there is a dispute in this negligent legal malpractice action in a diversity of citizenship case, i.e. the Defendant/ Appellee failed to show in the record that there

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was no genuine issues of material fact, and summary judgment should NOT have been granted when disputed facts and a demand for jury trial; therefore, the U. S. Court of Appeals, Eleventh Circuit DID NOT rule according to 11th Cir. R. 36-1..... 19

II. The State of Alabama's long arm statute (Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) was held to be invalid and repugnant to the U. S. Constitution, Fifth Amendment due process when in fact and law in personam jurisdiction was not lacking in the U. S. District Court, Northern District of Alabama, Western Division, since the underlying case, 87-6-CIV 17 (b) should NOT have been transferred to Florida for lack of in personam jurisdiction due to minimum contacts of Defendant with the State of Alabama. i.e. the U.S. Court of Appeals, Eleventh Circuit held state statute [Alabama long arm statute, Alabama

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Rules of Civil Procedure, 4.2 a(2)(I)] repugnant to U.S. Constitutuion, Amendment V, due process because affirmed summary judgment. 13

Conclusion 20

Certificate of Service

Appendix

Footnote continued from p. vi.

Mr. Jenkins incorrectly alleging "no substantial federal question" on p. 3 of Appellee Brief is not applicable and no grounds for "Motion to Dismiss...". However, in the instant case, substantial federal questions are also involved because Appellant's 5th and 7th Amendment rights under the U.S. Constitution were violated when the Defendant falsely stated no genuine fact issue when in reality the opposite is true. The Defendant has done nothing but disagreed with all claims charged, negligent legal malpractice, breach of contract, fraud, and breach of fiduciary duty. The Defendant, Shapiro, practiced law in the same Court in Florida that the instant Summary Judgment was incorrectly granted. The trier of the fact should have been the jury that was properly demanded, not having a Judge rule on a Summary Judgment concerning an attorney, Defendant Shapiro, who practiced in the same Court. Then, the U.S. Court of Appeals, Eleventh Circuit, without reading the record for disputed facts, affirms a summary judgment when all issues were disputed. In other words, in the lower federal court, the issues of negligent legal malpractice, breach of contract, fraud, and breach of fiduciary duty were all disputed, yet a summary judgment was granted thus violating Dr. Asam's 5th and 7th Amendment rights to the U.S. Constitution.

The summary judgment was granted when both the Defendant and Plaintiff had been granted 6 more months of needed discovery, and both Defendant and Plaintiff

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Arrowsmith v. United Press International, 320 F. 2d 219, 223 (2d Cir. 1963) 18

Bucks County Playhouse v. Bradshaw, 577 F. Supp. 1203 at 1208 (U.S. Dist. Ct. E.D. PA 1983) 18

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 19

Calagez v. Calhoun, 309 F. 2d 248, 256 (5th Cir., 1962) 17

DeSotacho, Inc. v. Valnit Industries, Inc. 350 So. 2d 447 (Ala. 1977) 19

Dillon Equities v. Palmer & Cay, Inc. 501 So. 2d 459 (Ala. 1986) 19

Hoffman v. Chandier, 431 So. 2d 499, 502 (Ala. 1983) 19

Marcus v. St. Paul Fire and Marine Ins. Co., 651 F. 2d 379, at 380 (5th Cir.,1981).. 20

New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962, rev'd on other grounds, 376 U.S. 254 (1964) 13,14,19

Footnote continued from p. x.

Mr. Jenkins was trying to indicate element essential to case not proved on p. 2. However, this statement concerning element essential to case not being proved was a figment of Mr. Jenkins imagination when he

TABLE OF CITATIONS (CONTINUED)

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Partin v. Michaels Art Bronze Co., 202 F. 2d 541, 542 (3rd Cir. 1953) 18

St. Cyr v. Greyhound Lines, Inc. 486 F. Supp. 724, (U.S. Dist. Court, E.D.N.Y., 1980). 20

Champ Lyons "In personam Jurisdiction in Federal Court," p 13 in Federal Practice seminar, School of Law, The University of Alabama, The Alabama State Bar 16

Alabama Rules of the Court, 1986 Desk Copy, Rule 4.2 a(2)(I), P. 32, COMMENTS 17

U.S. Constitution

AMENDMENT V 14,19

AMENDMENT VII..... 14

Statutes Cited

28 U.S.C. § 1254 4,13,20

42 U.S.C. § 1983 16

Footnote continued from p. xi

stated, "There was a failure on part of one of parties to establish existence of an element essential to their case". Dr. Asam proved all elements in case and the case should have been before a jury to determine the facts in case because Defendant disputed facts in Answer to Complaint and Defendant failed to show that there was no genuine issues of matterial fact. All Defendant did was make the statement no genuine issues of material fact when no proof.

Rules Cited:

Federal

Federal Rules of Civil Procedure

Rule 56 19

State

Alabama Rules of Civil Procedure

Rule 4.2 a (2)(I) 13-16

STATEMENT REGARDING ORAL ARGUMENT

Because of the complexities, irregularities and numerous judicial errors made in the lower court, oral argument is requested so that the Honorable Justices can understand and ask questions.

Footnote continued from p. xii.

There is no doubt about it that when an attorney, Mr. Shapiro, after receiving over $12,000 in the case to represent client, demands $5000 unearned money within 48 hours or he would withdraw, and abandons client and fails to release contingency fee, the attorney committed negligent legal malpractice. Mr. Jenkins who is also representing the insurance carrier for malpractice, and representing Mr. Shapiro for the first time in the Supreme Court of the United States, Mr. Jenkins is not stating the facts correctly.

FURTHER, the THRESHOLD ISSUE is Appellant's #II is whether the Honorable Supreme Court of the United States has jurisdiction for appeal under 28 U.S.C. §1254 in this diversity of citizenship case?

Mr. Jenkins in his Appellee Brief has shown no grounds for dismissal of an appeal of right under 28 U.S.C. § 1254.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. 88-836

JULIA L. ASAM, Ph.D.,J.D.[1]

Plaintiff/Appellant

vs.

ROBERT J. SHAPIRO,

Defendant/Appellee

APPEAL FROM THE U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

In this Appellant's Reply Brief, the Appellant moves this Honorable Court in her Motion to Strike Appellee's "Motion to Dismiss/ or Affirm..." because no valid grounds to dismiss a negligent legal malpractice action in diversity of citizenship case wrongfully transferred. This

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[1]Defendant attorney on page 1 of "Motion to Dismiss"... incorrectly stated "In re Robert J. Shapiro, Appellee" when instant case is Asam v. Shapiro, NO. 88-836.

Further, Mr. Jenkins, attorney for appellee made a false statement, concerning the underlying case "as a result of termination..." on page 1 of his "Motion to Dismiss" when in reality a false document was added to Dr. Asam's teacher's personnel file after she had completed her contract. See 87-531.

instant case should be reviewed as an appeal of right under 28 U.S.C. § 1254 (2) because a State Statute [Alabama Rules of Civil Procedure, 4.2 a(2)(I), long Arm Statute] was held by the U.S. Court of Appeals, Eleventh Circuit, (Issue #22 in Appellant Brief 88-3026,[2] and Writ for Mandamus 87-7252 and 87-390, not reviewed on its merits) to be held invalid as repugnant to the Constitution, Fifth Amendment due process.

The U.S. Court of Appeals, Eleventh Circuit, is clearly erroneous in affirming the U.S. District Court, Middle District of Florida's decision granting Defendants summary judgment when the summary judgment below was NOT supported by the record because disputed facts in a negligent legal malpractice action i.e. the attorney in the underlying case, Mr. Robert J. Shapiro,[3] Defendant/Appellee, demanded $5000 of unearned money within 48 hours or he would withdraw from the underlying case 86-3142

[2] See Appendix D.

[3] On Page 1, Appellee Brief, Mr. Jenkins has propagandized the facts by making it appear "disputes arose" when in fact agreement NOT to pay any more money until case set for trial since client, Dr. Asam had already paid over $12,000. See Appendix E.

(87-531 in the Supreme Court of the United States) after Mr. Shapiro, had received over $12,000 to represent client (Julia Asam). Therefore, the U.S. Court of Appeals, Eleventh Circuit, did not rule according to 11th Cir. Rule 36-1.

The second reason the Appellant's Motion to Strike... should be granted because it is questionable that the Appellee's attorney filed the "Motion to Dismiss..." timely because the postmark on the outside of the copy sent Appellant was dated December 20, 1988; there was no certificate of service in the Appellee brief; a separate Certificate of Service was signed by Ms. O'Hern, who has not filed an appearance or affidavit of proof of filing pursuant to the Rules of the Supreme Court of the United States, Rule 28, .2, which states, "if there is filed with the Clerk a notarized statement by a member of the Bar of this Court, setting forth the details of the mailing..." Further, Ms. O'Hern in her Certificate of Service

failed to list the Plaintiff/ Appellant, i.e. any Certificate of Service should have been signed by Mr. Jenkins for proof of service.

The Appellant incorporates the entire Jurisdictional Statement in this instant case into this Reply Brief...

OPINIONS BELOW

See Jurisdictional Statement in this instant case.

JURISDICTION

The jurisdiction of the Supreme Court of the United States to review the final judgment order of the U.S. Court of Appeals, Eleventh Circuit, is invoked under 28 U.S.C. §1254, as appeal or Writ.

For continuation of jurisdiction see the Jurisdictional Statement in this instant case.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V, and VII, U.S. Constitution.

See Jurisdictional Statement pp. 3-4 for details.

RULES INVOLVED

The Federal Rules of Civil Procedure, Rule 56 (c).

Alabama Rules of Civil Procedure, Rule a(2)(i), Long Arm Statute.

See Jurisdictional Statement pp.4-5 for details.

STATEMENT OF THE CASE AND FACTS

The U.S. Court of Appeals, Eleventh Circuit (case no. 88-3026) without checking the record which clearly showed disputed facts about negligent legal malpractice of the Defendant/ Appellee, ERRONEOUSLY affirmed the underlying case no. 87-6-CIV Ft. M. 17 (B), which is a diversity of citizenhsip with negligent legal malpractice action of Mr. Robert J. Shapiro, also attorney, who made a demand of $5000 unearned money within 48 hours or he would withdraw as attorney in the underlying case number 86-3142 in the U.S. Court of Appeals, Eleventh Circuit.

Compensatory damages are $301,742.00 .

On November 6, 1987, the Plaintiff filed a Memorandum to Court (R3 80) which stated in detail disputed facts that would preclude any Summary Judgment.

1. Whether the Defendant, Mr. Shapiro, breached his fiduciary duty and duty of loyalty and honest dealing to his client, Julia Asam, at the time in November 1984, when Mr. Shapiro demanded $5000 of unearned money within 48 hours or he would withdraw after previously receiving over $12,000 i.e. did Mr. Shapiro act as a reasonable prudent attorney in withdrawing and by his sudden manner of withdrawing and failing to release the contingency fee claim also unearned, caused the plaintiff to lose at the trial court level because there was no attorney.

2. Whether the Defendant, Mr. Shapiro breached the retainer contract since the contract did not state he could withdraw from the case within 48 hours after a demand of $5000 unearned money. The contract stated he would represent the client and the

plaintiff had previously always paid whatever money he had requested but there was no time limit of 48 hours.

3. Whether the Defendant, Mr. Shapiro, commited an intentional tort, particularly fraud, which was stated in particular in the Complaint with Exhibits since the Motion to Withdraw sent on Nov. 2, 1984 was different from the one on Nov. 9, 1984.

4. Whether the Defendant, Mr. Shapiro, breached his duty of due care and was negligent by failing to continue to represent Julia Asam until she obtained an attorney, i.e. Mr. Shapiro owed the plaintiff a duty of due care to represent her in the underlying case after receiving over $12,000 and Mr. Shapiro failed to act with the degree and skill of an ordinary general legal practitioner, since Mr. Shapiro did not stay on the case until another attorney was obtained and gave unreasonable notice of 48 hours to withdraw from the case unless he was paid $5000 unearned money.

Mr. Shapiro failed and was negligent by not notifying the Plaintiff at the time he turned over the files that there was an altered and or exchange document in one of his depositions. By the time the plaintiff discovered the said altered document and wrote an amended complaint, the amended complaint was denied by the Court.

The POINT IS the U.S. Court of Appeals, Eleventh Circuit failed to notice in the record the disputed facts (see R3 80, R3 83, R3 84, R3 87, R3 88, R4 104, R4 105 and R4 98) clearly showing that summary judgment was precluded and the case should have been tried before a jury which had been demanded, i.e. the U.S. Court of Appeals, Eleventh Circuit did not rule according to 11th Cir. R. 36-1 (d) which states,

> (d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;"

because when the judgment was rendered on August 24, 1988 affirming the lower court without an opinion it was obvious that the

Honorable Court had not read the record which clearly shows the disputed facts that preclude any summary judgment.

Defendant/Appellee, Robert J. Shapiro, attorney, was retained to represent Julia Asam, Plaintiff/ Appellant in the 42 U.S.C. §1983 action 86-3142 (87-531) case but Mr. Shapiro committed negligent legal malpractice, which arose in Montgomery, Alabama when Defendant Shapiro made a demand in a letter addressed to Dr. Julia L. Asam, P.O. Box 20544, Montgomery, AL 36120, dated November 2, 1984 [copy of letter attached to Complaint] showing that it was stamped Montgoemery, Alabama and said letter demanded $5000 unearned retainer money or Mr. Shapiro would withdraw as attorney on November 9, 1984 (and Mr. Shapiro did withdraw on November 9, 1984) when the demand was for unearned money of $5000 within 48 hours. Therefore, Mr. Shapiro breached his contract for legal services with an Alabama resident, Julia Asam, Plaintiff/Appellant.

Dr. Asam chose to file the instant underlying case in the U.S. District Court, Northern District of Alabama, Western Division, since she is a resident of Alabama in Tuscaloosa, Alabama. The case should have remained in Alabama since minimum contacts were clearly shown with the State of Alabama according to the forum's state (Alabama) under Alabama Rules of Civil Procedure 4.2 a(2)(I).

Because purposeful transactional business was conducted in the state of Alabama by Mr. Shapiro by his minimum contacts with the state of Alabama as described above, and the underlying case (currently 87-6-CIV F.M. 17 (B) in the U. S. District Court, Middle District of Florida, Fort Myers Division, should be transferred back to the U.S. District Court for the Northern District of Alabama, Western Division, because there is NO LACK OF IN PERSONAM jurisdiction. See Appendix F-I.

The alternative court to transfer back into a federal court in Alabama is the U.S. Dis-

trict Court, Middle District of Alabama because the breach of the retainer agreement between Julia Asam and Defendant, Robert J. Shapiro occurred when Mr. Shapiro demanded $5000 unearned money within 48 hours or he would withdraw as attorney in the 42 U.S.C. §1983 underlying action with pendent libel [86-3142 U.S. Court of Appeals, 11th Circuit, and 87-531, The Supreme Court of the United States]. See Exhibit H.

Defendant, Robert J. Shapiro did transact business in the State of Alabama by his admitted correspondence and telephone conversations from Florida to Alabama, and in particular the purposefully minimum contact with the State of Alabama was made when he wrote his letter dated June 1, 1982 to Julia Asam in Alabama negotiating a retainer agreement and requesting not only Julia Asam to sign the agreement but her father to sign the agreement and her father had been an Alabama resident for over 50 years. Further, Defend-

ant Shapiro asked for $2000.00 in the same letter which is transacting business. [See APPENDIX C AND D OF 87-390, The Supreme Court of the United States; also see APPENDIX G OF 87-390 detailing in the quote from Mr. Shapiro's letter that Mr. Shapiro made a demand for $5000 within 48 hours or he would withdraw.] See Appendix F and G.

Mr. Shapiro intentionally would not sign a release from the contingency of the retainer contract until after the underlying § 1983 trial.

The point is the granting of a continuance for 90 days (mentioned in Appellee Brief, p. 1) "after the fact" does not excuse Defendant's malpractice, who abandoned client because he demanded $5000 unearned money within 48 hours or he would withdraw. Also, the fact Defendant failed to release concingency was reason no attorney was found within the 90 days.

Also see 87-531, The Supreme Court of the United States pp. 16-19 concerning PHANTOM DOCUMENT #34 when the highest document in

ARGUMENT AND SUBSTANTIALITY OF QUESTIONS

The threshold issue (Appellant's Question Presented #II p. iv, and Appellee's question #3) is whether the Honorable Court has jurisdiction as appeal of right under 28 U.S.C. § 1254 (2) because the U.S. Court of Appeals, Eleventh Circuit affirmed (see issue #22 in 88-3026) the order by the U.S. District Court, Northern District of Alabama wrongfully transfering the instant diversity of citizenship case for alleged lack of in personam jurisdiction and ignoring the minimum contacts the Defendant, Mr. Shapiro made with the State of Alabama, [See APPENDIX F AND G) thus the Long Arm Statute (Alabama Rules of Civil Procecure, Rule 4.2 a(2)(I) was considered invalid, when the law in Alabama is that the Long Arm Statute is considered coextensive with the outer limits of due process (See Standard of Sullivan, New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962, rev'd on other grounds, 376 U.S. 254 (1964), doctrine as to the extension of Alabama's long arm jurisdiction to the outer limits.) See APPENDIX F-I.

II. The State of Alabama's long arm statute [Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) was held to be invalid and repugnant to the U.S. Constitution, Fifth Amendment due process when in fact and law in personam jurisdiction was not lacking in the U.S. District Court, Northern District of Alabama, Western Division, since the underlying case, 87-6-CIV 17 (b) should NOT have been transferred to Florida for lack of in personam jurisdiction due to minimum contacts of Defendant with the State of Alabama i.e. the U.S. Court of Appeals, Eleventh Circuit held state statute [Alabama long arm statute, Alabama Rules of Civil Procedure, 4.2 a(2)(I)] repugnant to U.S. Constitutuion, Amendment V, due process because affirmed summary judgment.

The constitutional issue involving the outer limits of the federal due process of the Fifth Amendment to the United States Constitution was misinterpreted by the Honorable Judge Sam C. Pointer in a diversity of citizenship case involving the Standard of Sullivan, (New York Times Co. v. Sullivan, 273 Ala. 656, 144 So.

2d 25 (1962, rev'd on other grounds, 376 U.S. 254 (1964), doctrine as to the extension of Alabama's long arm jurisdiction (Alabama Rules of Civil Procedure 4.2 is Alabama long arm statute) to the outer limits of due process when the Honorable Sam C. Pointer, Jr., U.S. district Judge transferred the instant underlying case (87-6-CIV F.M. 17 (b) in U.S. District Court, Middle District of Florida, Fort Myers Division) for alleged lack of in personam jurisdiction; therefore, the instant case should be transferred back to the forum state of Alabama. See Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I).

The comments on the Rule 4.2 a(2)(I) in the Alabama Rules of the Court, 1986 Desk Copy, p. 31 states,

> "This subparagraph (I) is but a restatement of the current definition of the federal constitutional standard."

The Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) states,

> "(I) otherwise having some minimum contacts with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action."...

See Champ Lyons "In Personam Jurisdiction in Federal Court," p. 13 in Federal Practice Seminar, School of Law, The University of Alabama, The Alabama State Bar, which states,

> "Complexities of election between state of federal law as controlling on the question of the reach of process initiated pursuant to state law under FRCP 4 are happily short circuited by reason of Alabama's view that the reach of the Alabama "long arm" is coextensive with the outer limits of due process. New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962), rev'd on other grounds, 378 U.S. 254 (1964). Furthermore, the necessity for resort to a close analysis of Alabama's transactional bases for an attempt to assert jurisdiction over the person over a non-resident as a prelude to the application of federal standards dealing with due process is also eliminated by reason of Alabama's broad phraseology in connection with assertion of jurisdiction over nonresidents. ARCP 4.2, dealing with bases and methods of service outside of the State of Alabama, delineates specific activity which lead to a prospect for legal liability, and after the delineation of various specific types of activity, concludes with a general characterization of "otherwise having some minimum contact with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action" ARCP 4.2 (a)(2)(I)...

The Defendant, Robert J. Shapiro, in the underlying case, in which he as an attorney in a 42 U.S.C. § 1983 action with pendent libel, made minimum contacts with the state

of Alabama to allow federal court (U.S. District Court for the Northern District of Alabama) to have in personam jurisdiction, i.e. Mr. Shapiro had minimum contacts with the state of Alabama through correspondence enclosing retainer contract and telephone calls from the state of Florida to the state of Alabama by calling Julia Asam in Montgomery, Alabama from Florida concerning his legal representation. See APPENDIX F-G.

Defendant Shapiro's letter dated June 1, 1982 to Julia Asam in Alabama with enclosed proposed retainer contract and Defendant Shapiro requested $2,000 was a definite business transaction. [See 87-390 APPENDIX C and D for details, The Supreme Court of the United States case]. See Appendix F and G.

See Alabama Rules of the Court, 1986 Desk Copy, p. 32 which states

> ..."federal cases show that transacting business in Alabama would include such factors as ...correspondence with persons in Alabama (Calagaz v. Calhoun, 309 F. 2d 248, 256 (5th Cir. 1962)... (Emphasis added.)

To consider the threshold issue of whether the U.S. District Court for the Northern District Court in Alabama lacks in personam jurisdiction over defendant please consider the following cases.

See Bucks County Playhouse v. Bradshaw, 377 F. Supp. 1203 (1983), a U.S. District Court, E.D. Pennsylvania case, held that

> "To determine if personal jurisdiction exists over nonresident defendant, district court must look to law of state in which it sits."

Also see Arrowsmith v. United Press International, 320 F. 2d 219, 223 (2d cir. 1963); Partin v. Michaels Art Bronze Co. 202 F. 2d 541, 542 (3rd Cir. 1953).

The Bucks County Playhouse v. Bradshaw 577 F. Supp. 1203 at 1208 states,

> "In essence, an inquiry into the personal jurisdiction of a court under the long-arm statute raises but two questions:
> 1) What are the contacts of the defendant with the forum state which give rise to the cause of action complained of and
> 2) Are the contacts constitutionally sufficient under the due process clause."

Appellant met both elements. See Appendix F-I, showing minimum contacts constitutionally sufficient.

Alabama law is broader than the Pennsylvania

law stated in Bucks County Playhouse v. Bradshaw, supra. The reach of the Alabama long arm is coextensive with the outer limits of due process. See New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 24 (1962), rev'd on other grounds, 376 U.S. 254 (1964).

State law is defined in Hoffman v. Chandler, 431 So. 2d 499, 502 (Ala. 1983) which states,

> "(1) The term 'State law' includes all laws, decisions, rules, regulations, or other State Action having the effect of law, or any State."

See Dillon Equities v. Palmer & Cay, Inc. 501 So. 2d 459 (Ala. 1986)

Also see DeSotacho, Inc. v. Valnit Industries, Inc. 350 So. 2d 447 (Ala. 1977) and Burger King Corp. v. Rudzewica, 471 U.S. 462 (1985).

To Sum: Appellee's #3 Argument is incorrect (#II Question of Appellant is #3 of Appellee, p. iv).

I. The Plaintiff's 5th and 7 Amendment rights under the U.S. Constitution have been violated because the lower federal courts failed to rule according to the Federal Rules of Civil Procedure, Rule 56(c), when the record clearly shows there is a dispute in this negligent legal malpractice action in a diversity of citizenship case, i.e. the Defendant/ Ap-

pellee failed to show in the record that there was no genuine issues of material fact, and summary judgment should NOT have been granted when disputed facts and a demand for jury trial; therefore, the U. S. Court of Appeals, Eleventh Circuit DID NOT rule according to 11th Cir. R. 36-1.

See Marcus v. St. Paul Fire and Marine Ins. Co., 651 F. 2d 379, (5th Cir., 1981), states,

> "A motion for summary judgment may be granted in federal court only if there is no issue as to any material fact ..."

See St. Cyr v. Greyhound Lines, Inc., 486 F. Supp. 724, (U.S. Dist. Court, 1980).

> "Issues concerning negligence, such as observance of due care ... are ordinarily not susceptible to summary adjudication."

To Sum: Appellee's #1 and 2 Arguments (#I Question of Appellant) are incorrect because Amendments V and VII of U.S. Constitution rights of Appellant were violated.

CONCLUSION

The Supreme Court of the United States has jurisdiction under 28 U.S.C. § 1254 as an appeal or Writ of Certiorari.

Respectfully submitted

Julia McCain Lampkin Asam

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above JURISDICTIONAL BRIEF was sent to the Honorable Sam C. Pointer, U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama, 35203; Honorable Elizabeth A. Kovachevich, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S, District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St. N.W., Atlanta, Georgia 30303; Mr. John N. Jenkins, and Ms. Ann O'Hern, Attorneys, Marlow, Shofi et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629; INAPRO, P.O. Box 2353, New York, New York 10272 and Mr. Robert J. Shapiro, 13822 Creek Dr., Tampa, Florida 33618 this 29th day of December 1988.

Julia McQuin Langhorn Asam

APPENDIX

INDEX OF APPENDIX

Page

APPENDIX A Judgment entered on August 24, 1988 affirming summary judgment, and there was no opinion but stated, "Per Curiam: affirmed. See 11th Cir. R. 36-1." [When see 11th Cir. R. 36-1 - note Court did not rule according to own rule since failed to rule according to record which clearly showed disputed facts]. 1a

APPENDIX B Notice of Appeal filed on November 8, 1988 with attachments. 2a

APPENDIX C CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED..... 10a

APPENDIX D Issue #22 from U.S. Court of Appeals, Eleventh Circuit, Case 88-3026. Alabama Long Arm Statute (Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I), was considered to be invalid but there were minimum contacts. (See APPENDIX F and G). 14a

APPENDIX E Agreement that Mr. Shapiro made with Dr. Asam that he would not receive 14a

INDEX OF APPENDIX (CONTINUED) Page

additional retainer of $5,000 until the case was set for trial. Exhibit A, page 4, attached to the "Motion for Reconsideration... (R4 105). 14a

APPENDIX F Letter to Mrs. Julia Asam in Alabama from Defendant Shapiro in Florida concerning retainer contract with proposed contract enclosed. Letter was dated June 1, 1982. 15a

APPENDIX G Proposed retainer contract enclosed in the June 1, 1982 letter from Defendant Shapiro to Julia Asam in Alabama. 16a

APPENDIX H Pertient quote from letter dated Nov. 2, 1984 from Robert J. Shapiro to Dr. Julia L. Asam in Montgomery, Alabama, demanding $5000 or he would withdraw as attorney. 18a

APPENDIX I Pertinent quotes from affidavit from Robert J. Shapiro, dated Dec. 1, 1986 and in the record. 18a

APPENDIX A

Filed and Entered August 24, 1988

[On left "DO NOT PUBLISH" but no opinion]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

88-3026

Non-Argument Calendar

D.C. Docket No. 87-00006

JULIA L. ASAM,

Plaintiff-Appellant,

versus

ROBERT J. SHAPIRO,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

(August 24, 1988)

Before HILL, VANCE and COX, Circuit Judges.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1

"Costs taxed against plaintiff-appellant."

Judgment Entered: August 24, 1988

For the Court: Miguel J. Cortez, Clerk

APPENDIX A (CONTINUED)

By: s/ Karleen McNalt

Deputy Clerk

ISSUED AS MANDATE: Sept 16, 1988

[Certified[A True Copy Attested: Clerk, U.S. Court of Appeals, Eleventh Circuit

By: s/Debbie Cordell

Deputy Clerk

Atlanta, Ga.

APPENDIX B

Notice of Appeal filed November 8, 1988.

IN THE U.S. COURT OF APPEALS

ELEVENTH CIRCUIT

JULIA L. ASAM, Ph.D., J.D.

Plaintiff/Appellant

vs.

ROBERT J. SHAPIRO,

Defendant/Appellée

Case no. 88-3026

NOTICE is hereby given that Julia L. Asam, Ph.D., J.D., (Julia McCain Lampkin Asam),

APPENDIX B (CONTINUED)

Plaintiff/Appellant,above named, hereby appeals to the Supreme Court of the United States from the order of judgment entered on August 24, 1988 by the U.S. Court of Appeals, Eleventh Circuit (See Exhibit 1 [A] attached) and the denial of Appellant's Motion to Supplement the Record on Appeal (Exhibit 2 [B] attached) and further appeals this order of judgment entered on August 24, 1988 which affirmed the lower court to be clearly erroneous based on the 11th Cir. R. 36-1 because the summary judgment below was not supported by the record because disputed facts in a negligent legal malpractice action when the attorney in the underlying case, Mr. Robert J. Shapiro, defendant/appellee, demanded $5000 of unearned money within 48 hours or he would withdraw from the underlying case 86-3142 (87-531 in the Supreme Court of the United States) after Mr. Shapiro, had received over $12,000 to represent client (Julia Asam).

APPENDIX B (CONTINUED)

The Supreme Court of the United States has jurisdiction under the following:

28 U.S.C. §1254; 28 U.S.C. §2106; 42 U.S.C. §1983 (underlying case since negligent legal malpractice case under 28 1332

Notice of Appeal to Supreme Court of the United States from U.S. Court of Appeals, Eleventh Circuit ... p. 2

diversity of citizenship); 28 U.S.C. §1343 (3) and 28 U.S.C. §1651 (reference 87-3184 and 87-7252 in U.S. Court of Appeals Eleventh Circuit).

Proof of Service attached as well as Certificate of Service.

Jurisdictional Briefs (40 copies) will be sent to the Supreme Court of the United States together with the $200 docket fee.

Respectfully submitted,

s/ Julia Asam

Julia L. Asam, Ph.D., J.D.
P.O. Box 1022
University, Alabama 35486

APPENDIX B (CONTINUED)

Attachments

Exhibits 1 and 2

Proof of Service

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Notice of Appeal was sent to the Honorable Sam C. Pointer, U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama 35203; Honorable Elizabeth A. Kovachevich, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, The Supreme Court

"Notice of Appeal to Supreme Court of the United States from U.S. Court of Appeals, Eleventh Circuit p.3

of the United States, U.S. Supreme Court Building, 1 First St. N.E., Washington, D.C. 20543; Mr. John D. Shofi, and Ms. Ann O'Hern,

APPENDIX B (CONTINUED)

Attorneys, Marlow Shofi, et al., 2907 bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629, INAPRO, P.O. Box 2353, New York, New York 10272 and Mr. Robert J. Shapiro, 13822 Creek Dr., Tampa, Florida 33618 this 4th day of November 1988.

s/ Julia L. Asam

Exhibit A [Exhibit 1] is APPENDIX A p. 1a.

Exhibit B p. 1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 88-3026

[stamped on right] U.S. Court of Appeals, Eleventh Circuit, FILED APR 19, 1988, Miguel J. Cortez, Clerk.

JULIA L. ASAM,

Plaintiff-Appellant,

versus

ROBERT J. SHAPIRO

APPENDIX B (CONTINUED)

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

ORDER:

Appellant's motion to supplement the record on appeal is denied.

s/ James C. Hill

United States Circuit Judge

Exhibit B p. 2

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Filed U.S. Court of Appeals, Eleventh Circuit, Mar 17, 1988, Miguel J. Cortez, Clerk, [stamped on right]

[stamped in center] U.S. Court of Appeals, Received Mar. 17, 1988, Atlanta, GA.

JULIA L. ASAM,

Plaintiff/Appellant,

v.

ROBERT J. SHAPIRO

Defendant/Appellee

APPENDIX B (CONTINUED)

MOTION TO SUPPLEMENT THE RECORD

Comes now Julia L. Asam, Ph.D., J.D., Pro Se, Plaintiff/Appellant and moves this Honorable Court to Supplement the Record in Case no. 88-3026 with the following briefs by Julia Asam.

The briefs are Supreme Court of the United States cases related to the instant case 88-3026.

1. 87-345 Jurisdictional Statement and/or Petition.

2. 87-345 Petition for Rehearing

3. 87-390 Jurisdictional Statement and/or Petition

4. 87-390 Petition for Rehearing

5. 87-531 Jurisdictional Statement (underlying case to the instant case no. 88-3026).

6. 87-531... Brief Opposing Motion to Dismiss.

7. 87-531 Peition for Rehearing

Each of the briefs above were sent to the U.S. Court of Appeals for the Eleventh Circuit at the time of briefing as a reference

APPENDIX B (CONTINUED)

copy to 87-3184, 87-7252, or 86-3142.

The Plaintiff/Appellant needs to reference the above briefs when writing the Appellant Brief for 88-3026 because the issues in the Appellant Brief 88-3026 are related to issues in the above briefs written by Julia Asam. [End of first page].

Page 2 Motion to Supplement the Record

The plaintiff/Appellant would appreciate a ruling on this motion to Supplement the Record by March 28, 1988 so that the plaintiff/Appellant would be able to timely file a Motion to Expand the Number of Pages of the Appellant Brief. It will not be necessary to write a Motion to Expand the Number of Pages of the Appellant Brief if the Appellant is allowed to reference the above listed "summary" briefs on issues in the instant case no. 88-3026.

Respectively submitted,

s/Julia L. Asam

APPENDIX B (CONTINUED)

Julia L. Asam, Ph.D., J.D., Pro Se,
P.O. Box 1022, University, Alabama 35486

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Motion to Supplement the Record was sent to Ms. Ann O'Hern, Attorney, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629 this 15th day of March 1988.

s/ Julia L. Asam

Exhibit B p. 3

APPENDIX C

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment V

in pertienent part, as follows:

"No person shall... be deprived of life, liberty or property, without due process of law..."

United States Constitution, Amendment VII

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,

APPENDIX C (CONTINUED)

and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

FEDERAL STATUTES

42 U.S.C. §1983

"Every person who, under color of any statute, ordinance, regulation, custom, usuage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

28 U.S.C. §1343(3)

3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usuage, or any right, privilege or immunity secured by the Constitution

APPENDIX C (CONTINUED)

of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

28 U.S.C. §2106

"The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of court lawfully brought before it for review, and many remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

28 U.S.C. §1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

APPENDIX C (CONTINUED)

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted the Federal questions presented;"

28 U.S.C. §1651

"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usuages and principles of law.

ALABAMA STATUTE

Alabama Long Arm Statute

Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) states,

"(I) otherwise having some minimum contacts with this state, and under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action."...

APPENDIX D

From Appellant Brief, U.S. Court of Appeals, Eleventh Circuit, Case 88-3026.

#22. Whether the trial court erred in transferring the instant case from the U.S. District Court, Northern District of Alabama, Western Division to the U. S. District Court, Middle District of Florida, Fort Myers Division, for alleged lack of in personam jurisdiction?

Alabama Long Arm Statute (Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) was considered to be invalid below BUT there were minimum contacts. (See APPENDIX F AND G).

APPENDIX E

From Appellant Brief, U.S. Court of Appeals, Eleventh Circuit, Case 88-3026, p. 13-14.

"See Exhibit A, page 4, attached to the "Motion for Reconsideration...(R4 105) which is a letter dated January 24, 1986 from the Defendant, Mr. Shapiro, that clearly showed on p. 4 of this letter that Mr. Shapiro agreed to not receive an additional retainer of $5,000 until the case was set for trial. ... Exhibit A attached to

APPENDIX E (CONTINUED)

(R4 105) on p. 4 states,

"At some point after sending this letter to Dr. Asam, Dr. Asam called me and asked if it would be alright if she did not have to pay the $5,000 until the case was set for trial. I agreed to this."

APPENDIX F

Robert J. Shapiro
Attorney At Law
Tampa, Florida 33602
Admitted to the Bar
Florida and Pennsylvania
Telephone (813) 229-0378

June 1, 1982

Mrs. Julia Asam
P.O. Box 1022
University, Ala. 35486

Dear Ms. Asam:

Enclosed herewith is a retainer agreement for your review and signature. Since your father is going to pay for this litigation, I am asking him to sign the retainer agree-

APPENDIX F (CONTINUED)

ment also. Prior to signing the agreement, if you or your father have any questions. please feel free to call me.

Please sign, date and return the photocopy of the agreement to me. Sign, date and send the original to your father for his signature. Please have him return the original in the self addressed envelope. Then I will sign it and send you a copy.

Also, please remit $2,000.00 for the initial payment on my retainer.

Very truly yours,

s/Robert J. Shapiro

Robert J. Shapiro

RJS:kt

Enc.

APPENDIX G

The proposed retainer enclosed June 1, 1982 in the letter in Appendix C states,

" The undersigned client, JULIA LAMPKIN ASAM and her father C.B. Lampkin, Jr., [line drawn through and "and her father C.B. Lampkin Jr.,]

APPENDIX G (CONTINUED)

hereby retain, ROBERT J. SHAPIRO as JULIA LAMPKIN ASAM's attorney [line drawn through as JULIA LAMPKIN ASAM'S attorney] to represent her in connection with her claim for libel and damage to reputation against the School Board of Lee County, Florida.

...

(1) Receipt from us [her added above us] of a minimum retainer in the amount of $5000. [NOTE THIS ORIGINAL RETAINER WAS PAID AND Mr. Shapiro was paid over $12,000.00 so the alleged retainer on November 2, 1984 by Mr. Shapiro demanding $5000 or he would withdraw from the case in 48 hours is not in the original retainer contract.]

...

READ, APPROVED AND ACCEPTED.

JULIA LAMPKIN ASAM DATE

READ, APPROVED AND ACCEPTED

C.B. LAMPKIN, J.R DATE [line drawn through father's name by Mr. Shapiro]

I HEREBY ACCEPT employment upon the terms

APPENDIX G (CONTINUED)

and conditions as set above.

ROBERT J. SHAPIRO, ESQ. DATE [No signatures signed since proposed retainer contract].

APPENDIX H

Pertinent quote from letter dated Nov. 2, 1984 from Robert J. Shapiro to Dr. Julia L. Asam, P.O. Box 20544, Montgomery, AL 36120 states,

"I am enclosing a copy of a Motion to Withdraw as your attorney which I intend to file on Friday, November 9 unless I receive the $5,000.00 additional retainer..." (see Exhibit C in Complaint in record). Further, see Exhibit D in Complaint showing said letter dated Nov. 2, 1984 was received on Nov. 7, 1984, as evidenced by the certified mail return receipt; therefore, Defendant Shapiro made demand for $5000 within 48 hours or he would withdraw as attorney and did withdraw.

APPENDIX I

Pertinent quotes from affidavit from Robert J. Shapiro, dated December 1, 1986 and in the record, states,

APPENDIX I (CONTINUED)

"The only contacts I had with the plaintiff in Alabama were telephone conversations and letters that I wrote to her while she was in Alabama. I also talked to her on the telephone from Florida to Alabama. ... I do not have a residence in the State of Alabama, nor do I transact any business and have never transacted any business in the State of Alabama."

Please read these quotes from affidavit by Mr. Shapiro together with Appendix F letter to Mrs. Julia Asam, with address P.O. Box 1022, University, Ala. 35486, dated June 1, 1982 concerning a retainer agreement which was enclosed (see Appendix G). [a minimum contact with Alabama by Mr. Shapiro]; then, read Appendix H, showing Mr. Shapiro wrote Dr. Asam, at P.O. Box 20544, Montgomery, AL 36120 on Nov. 2, 1984, and Mr. Shapiro demanded $5000 unearned money or he would withdraw within 48 hours since said letter was not received until Nov. 7, 1984 (see returned receipt in Complaint, Exhibit D) and Mr. Shapiro stated in letter he intended to

withdraw by November 9,"unless he received the $5000.00 additional retainer" [a minimum contact with Alabama by Mr. Shapiro]. Defendant Shapiro clearly had minimum contacts with the State of Alabama and the Alabama Long Arm Statute, Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) should not have been invalid and the instant case was wrongfully transferred in a diversity of citizenship case for alleged lack of in personam jurisdiction because claimed no minimum contacts.

However, see APPENDIX F-I clearly showing minimum contacts.